

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION

<b>Brenda L. Mutcherson,</b>	)	Civil Action No. 9:12-0833-RMG-BM
	)	
Plaintiff,	)	
	)	
v.	)	<b>REPORT AND RECOMMENDATION</b>
	)	
<b>Care Core National,</b>	)	
	)	
Defendant.	)	
_____	)	

This action was originally filed by the Plaintiff, pro se, in the United States District Court for the Southern District of Georgia. Because it appears that venue lies in the state of South Carolina, the case was transferred to this United States District Court. See Court Docket No. 5.

The Plaintiff has filed a motion for issuance of a default judgment against the Defendant. Pursuant to Rule 55(b), Fed.R.Civ.P., a default judgment may be entered by the Clerk if the Plaintiff's claim is for a sum certain or a sum that can be made certain by computation, where the Defendant has been defaulted (Pursuant to Rule 55(a)) for not appearing, or in all other cases by the Court where appropriate. A review of the docket of this case reveals that entry of either a Rule 55(a) default or a Rule 55(b) default judgment against the Defendant is not warranted.

The Defendant was served with the Summons and Complaint on May 16, 2012, and the Defendant's responsive pleading was therefore due by June 6, 2012. See Court Docket No. 24. Defendant filed a motion to dismiss or in the alternative for a more definite statement on June 6, 2012. See Court Docket No. 25. That motion was not resolved until Order of the Court filed October



3, 2012. See Court Docket No. 34. Defendant thereafter had until October 17, 2012 to file its responsive pleading, and Defendant's answer was filed on that date. See Court Docket No. 37.

Therefore, there is no basis on which to hold the Defendant in default or to enter a default judgment against the Defendant, and Plaintiff's motion should be **denied**.<sup>1</sup>

The parties are referred to the notice page attached hereto.



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Bristow Marchant  
United States Magistrate Judge

October 29, 2012  
Charleston, South Carolina

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<sup>1</sup>As a motion for a default judgment is dispositive, a Report and Recommendation is being entered for review by the Court.



### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4<sup>th</sup> Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk  
United States District Court  
Post Office Box 835  
Charleston, South Carolina 29402

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).